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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 337

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY, NATIONAL LIFE INSURANCE COMPANY, PENN MUTUAL LIFE INSURANCE COMPANY, and PHOENIX MUTUAL LIFE INSURANCE COMPANY (original Plaintiffs); and AETNA LIFE INSURANCE COMPANY, THE PRUDENTIAL LIFE INSURANCE COMPANY OF AMERICA, THE UNION MUTUAL LIFE INSURANCE COMPANY (Plaintiffs Added by Stipulation),

Appellants,

v.

FRANK C. MOORE, Comptroller of the State of New York,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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The motion to affirm claims that the questions involved are not substantial in view of the decisions cited in the opinion of the New York Court of Appeals.

None of the cases cited by the Court of Appeals sustains its decision on the Federal questions involved in this appeal. On the contrary, some of them tend to sustain the appellants' claims.

The Federal questions involved have never been presented to or passed upon by the Supreme Court of the United States, or by any court, prior to this case. They are substantial and are important to all insurance com-

panies and to the States which have enacted or contemplate legislation attempting to escheat life insurance policies.

The statute involved is the Abandoned Property Law of the State of New York, particularly the provisions which attempt to escheat life insurance policies, including policies issued by the appellant companies which are incorporated in other States. The Assignment of Errors and the Jurisdictional Statement describe the statute and set forth the grounds upon which appellants claim that it is repugnant to the Constitution of the United States, Article I, Sec. 10, and the Fourteenth Amendment, in that it impairs the obligations of the contracts and takes the appellants' property without due process of law.

No cases are cited by the Court of Appeals to justify the statutory attempt to escheat conditional contracts such as life insurance policies where the conditions precedent to liability, and to the amount of liability, are concededly unperformed. The statute ignores the terms of the policies and demands payment in full even though the insured may still be living, or may have died under circumstances which would reduce or eliminate liability. All defenses based upon misstatement of age, death caused by suicide, war, aviation, fraud, etc., are in effect abolished by depriving the appellants of their contract right to receive due proof of death or other event as a condition precedent to liability. The statute also deprives the appellants of their right to receive, consider and investigate claims under the policies, and to reject or resist unjust claims, and to adjust doubtful claims.

Until recently no legislature has attempted to escheat life insurance policies or similar unperformed conditional contracts. Previously, escheat legislation was limited to real property, tangible personal property, and to liquidated debts such as abandoned bank accounts. The statute here, in order to have something to escheat, attempts to create debts contrary to the terms of the contracts.

The Court of Appeals cites *Anderson National Bank* v. *Luckett*, 321 U. S. 233, and *Provident Inst. for Savings* v. *Malone*, 221 U. S. 660, which held that abandoned bank accounts, which are liquidated debts payable upon mere demand, could escheat to the State where the bank was located and incorporated and where the account was payable. They do not hold or suggest that the doctrine of escheat can be applied to unperformed conditional contracts such as life insurance policies where nothing is held or owing and where it is impossible to know or determine what sum, if any, might be payable if the conditions were performed.

On the jurisdictional question, the *Anderson* and *Provident* cases tend to sustain the appellants' contentions that jurisdiction to escheat (if there were anything to escheat) would be in the State where the insurance company is incorporated, and where the policies are payable by their terms, and where the funds behind the policies are located. No State attempts to escheat accounts owing by banks located in other States. It would lack jurisdiction. If life insurance policies are to be treated as debts, the same rule logically applies. This is discussed more fully in the Jurisdictional Statement.

The jurisdictional cases cited by the Court of Appeals have no bearing upon escheat or upon jurisdiction for that purpose. We shall discuss them briefly.

Curry v. *McCanless*, 307 U. S. 357, holds that two States may impose death taxes under some circumstances. However, the same property cannot escheat to two States.

Hoopeston Co. v. *Cullen*, 318 U. S. 313, holds that if a reciprocal insurance association does business in a foreign State, it must comply with its licensing requirements and regulations. No possible analogy to escheat is to be found in that case.

International Shoe Co. v. *Washington*, 326 U. S. 310, and *Prudential Ins. Co.* v. *Benjamin*, 328 U. S. 408, hold that corporations may be subjected to unemployment and

premium taxes in any State where they are doing business. If this rule applied to escheat the appellants might be required to pay the full amount of each policy to nearly every State in the Union.

Harris v. *Balk*, 198 U. S. 215, *Morris Plan Bank* v. *Gunning*, 295 N. Y. 324, and *Feinman* v. *Marks*, 294 N. Y. 367, hold that a debt can be attached in any State where the debtor can be served with process. The first attachment reduces the debt *pro tanto* so that the debtor will not be exposed to multiple liability. The vigilant creditor takes precedence. To apply such a theory to escheat would be to say that the State which first enacts an escheat statute gets jurisdiction.

None of the other cases cited in the opinion below are relevant to the Federal questions raised by this appeal.

Respectfully submitted,

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